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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THADDEUS JOHN GABARA
and LAWRENCE ALLEN RIGGE

Appeal 2009-010585
Application 10/668,544
Technology Center 2600

Before ALLEN R. MacDONALD, ROBERT E. NAPPI, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

INVENTION

Appellants' Figure 4 is reproduced below:

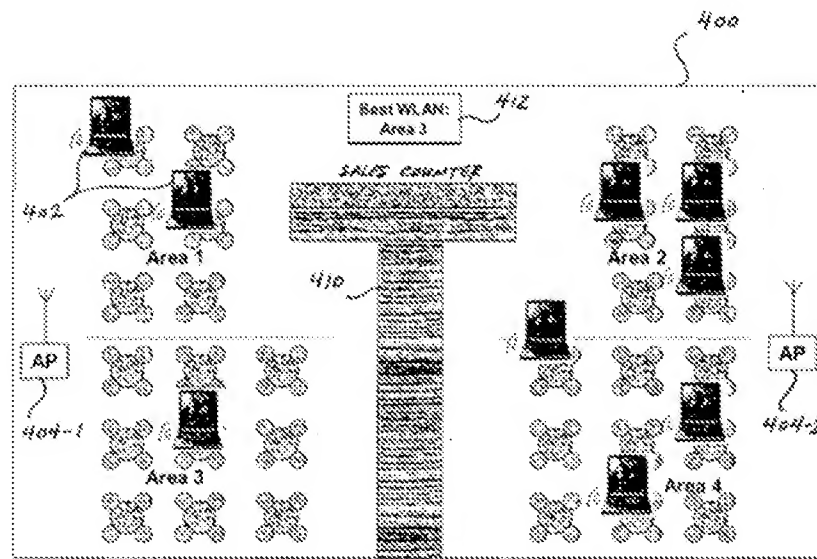


FIG. 4

Appellants' Figure 4 and claimed invention are directed to techniques for automatic determination of appropriate locations for user devices in a wireless network to achieve a level of data throughput performance (Spec. 2:21-28). The wireless network comprises user devices adapted for communication with at least one access point device (Spec. 2:22-23). A test of a communication link between at least one of the user devices and the access point device is initiated (Spec. 2:24-25). Based at least in part on a result of the test, an instruction (Fig. 4 (412)) displayable to a user associated

with a given one of the user devices is generated, the instruction being indicative of a location at which the given user device is expected to obtain a particular level of data throughput performance (Spec. 2:25-28; 10:13-17). The access point devices 404-1 and 404-2 store information characterizing the various areas (Spec. 10:18-19; Fig. 4). The access point devices use this information and test results obtained by testing various communication links in the system, to determine an appropriate location-indicative instruction to be displayed on the display screen 412 (Spec. 10:19-21; Fig. 4).

Claim 1, reproduced below, is representative of the subject matter on appeal (emphasis added):

1. A method for use in a wireless network comprising a plurality of user devices adapted for communication with at least one access point device, the method comprising the steps of:

initiating a test of a communication link between at least one of the user devices and the access point device, the test comprising a determination of data throughput performance; and

generating, based at least in part on a result of the test, an instruction displayable to a user associated with a given one of the user devices, the instruction being indicative of a location at which the given user device is expected to obtain a particular level of data throughput performance.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Pogrebinsky	US 2002/0044528 A1	Apr. 18, 2002
Cervello	US 2002/0060995 A1	May 23, 2002
Kraft	US 2003/0017858 A1	Jan. 23, 2003
Ramaswamy	US 2004/0052232 A1	Mar. 18, 2004
Comp	US 2004/0203698 A1	Oct. 14, 2004

Karaoguz	US 2004/0203889 A1	Oct. 14, 2004 (filed Dec. 9, 2002)
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Kinnunen	US 6,813,501 B2	Nov. 2, 2004
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The following rejections are before us for review:

1. The Examiner rejected claims 1-5, 8, and 17-20 under 35 U.S.C. § 102(e) as being anticipated by Karaoguz.
2. The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Comp.
3. The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Kraft.
4. The Examiner rejected claims 9 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of well-known prior art.
5. The Examiner rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Pogrebinsky.
6. The Examiner rejected claims 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Pogrebinsky and in further view of well-known prior art.
7. The Examiner rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Ramaswamy.
8. The Examiner rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Kinnunen.
9. The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz in view of Cervello.

ISSUES

1. Did the Examiner err in determining that Karaoguz teaches the limitation of “initiating a test of a communication link between at least one of the user devices and the access point device, the test comprising a determination of data throughput performance” as recited in claim 1 and similarly recited in claims 17-20?

2. Did the Examiner err in determining that it is proper to combine Karaoguz with Comp to meet the claim 6 limitations under 35 U.S.C. § 103(a)?

3. Did the Examiner err in determining that claim 7 is unpatentable over the combination of Karaoguz and Kraft under 35 U.S.C. § 103(a)?

4. Did the Examiner err in determining that claim 8 is unpatentable over Karaoguz under 35 U.S.C. § 102(e)?

FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence:

1. Karaoguz teaches that:

[t]he communication capacity information corresponding to the user’s wireless device can be embedded in the request message or can be embedded in a separate message signal from the wireless device to the configuration device. Furthermore, the communication capacity information can be preprogrammed within a look-up table or a storage unit in the configuration device, and can be accessed by an identifier of the wireless device.

¶ [0038].

2. Comp teaches a notification of potential connection loss in a wireless network where instruction is displayable on a display screen of the user device (§ [0022]).
3. Karaoguz teaches that the configuration device can provide the wireless device a topography map (e.g., Fig. 4) indicating the primary optimal information and the secondary primary information (§§ [0040]-[0044]; Figs. 4-5).
4. Karaoguz teaches the configuration device 400 has a display 440 (§ [0049]; Fig. 4).

PRINCIPLES OF LAW

Discussing the question of obviousness of a patent that claims a combination of known elements, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), explains:

If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. *AG Pro, Inc.*, 425 U.S. 273 (1976),] and *Anderson's-Black Rock[, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969),] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR, 550 U.S. at 417.

When there . . . are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that

instance the fact that a combination was obvious to try might show that it was obvious under § 103.

Id. at 421.

ANALYSIS

1. Does Karaoguz teach the limitation of “initiating a test of a communication link between at least one of the user devices and the access point device, the test comprising a determination of data throughput performance” as recited in claim 1 and similarly recited in claims 17-20?

Appellants argue (App. Br. 5-6) that Karaoguz does not explicitly or inherently describe a “test comprising a determination of data throughput performance.” Appellants posit (App. Br. 6) that instead, “the data rate of a user’s wireless device in Karaoguz is either embedded in a message sent by the wireless device to the configuration device or determined by reference to a lookup table or storage device.” Appellants contend (App. Br. 6) that “[i]t is this information that is subsequently utilized to help determine Karaoguz’s ‘optimal location information,’ described at, for example, paragraph 40.”

Appellants argue (Reply Br. 2) that the Examiner’s interpretation (Supp. Ans. 17) that test is a question is not consistent with the plain meaning of test and is inconsistent with the Specification.

We do not agree with Appellants’ arguments. The test is defined in claim 1 as “comprising a determination of data throughput performance.” Karaoguz teaches that the configuration device determines the data throughput performance (i.e., communication capacity information) of the wireless device at least by accessing the look-up table or storage unit using the identifier of the wireless device (FF 1).

Accordingly, we will affirm the Examiner’s rejection of claim 1 and independent claims 17-20 that have similar limitations as claim 1.

Furthermore we will affirm the Examiner's rejection of claims 2-5 and 9-16 that depend from claim 1 and which fall with claim 1 as no additional arguments of patentability were presented with respect to these claims. *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

2. Is it proper to combine Karaoguz with Comp to meet the claim 6 limitations under 35 U.S.C. § 103(a)?

Appellants argue (App. Br. 10) that the Examiner used improper hindsight in combining the references. Appellants contend (App. Br. 10) that the motivation cited by the Examiner (Supp. Ans. 11) of "providing the best available signal strength for the user, and consequently making wireless users happy" is an advantage of the present invention.

We are not persuaded by Appellants' argument. We are persuaded by the Examiner's articulated reasoning, which is consistent with *KSR*, that it would have been obvious to combine Comp with Karaoguz because using Comp's method (FF 2) of displaying instructions on a display of a user (i.e., known technique) would improve Karaoguz's method of generating instructions displayable to a user because it would yield predictable results (i.e., provide instruction displayable on a user's display screen) (Supp. Ans. 11, 18). *See KSR*, 550 U.S. at 417.

3. Is claim 7 unpatentable over the combination of Karaoguz and Kraft under 35 U.S.C. § 103(a)?

Appellants argue (App. Br. 11) that the Examiner's findings (Supp. Ans. 11-12, 18) lack any basis in objective evidence of record that would motivate one skilled in the art to combine the references as suggested. Appellants also contend (App. Br. 11; Reply Br. 4) that the Examiner cites a

motivation to combine references that finds its basis in the advantageous aspects of Appellants' invention, namely providing of location information to a user in a wireless network by displaying such information on a display screen not part of the user device itself.

We are not persuaded by Appellants' arguments. Karaoguz teaches (FF 3) that the configuration device (non-user device) can provide instruction displayable on a user's display screen and (FF 4) that the configuration device (non-user device) has a display screen. Thus, given the finite number of identified, predictable solutions for displaying the instructions (i.e., two solutions – display on a user or non-user display), a person of ordinary skill would have a good reason to pursue the known option of displaying the instructions on a non-user display device within his or her technical grasp. *See KSR*, 550 U.S. at 420. In addition, it would be useful to display the instructions on a non-user device, such as Karaoguz's configuration device, so an operator monitoring the configuration device could monitor the instructions given to users (FF 3, 4).

4. Is claim 8 unpatentable over Karaoguz under 35 U.S.C. § 102(e)?

Appellants argue (App. Br. 6-7) Karaoguz does not teach the limitation of “the test comprises a test of at least one of an uplink communication channel between the user device and the access point device and a downlink communication channel between the user device and the access point device” as recited in claim 8.

The Examiner reasons (Supp. Ans. 19) that Karaoguz's test inherently involves an uplink communications channel and a downlink communication channel.

We are persuaded by Appellants' argument. Karaoguz's test comprising a determination of data throughput performance device at least by accessing the look-up table or storage unit using the identifier of the wireless device (FF 1) does not teach using an uplink communications channel and a downlink communication channel .

Thus, we will reverse the Examiner's rejection of claim 8.

CONCLUSIONS

1. The Examiner did not err in determining that Karaoguz teaches the limitation of "initiating a test of a communication link between at least one of the user devices and the access point device, the test comprising a determination of data throughput performance" as recited in claim 1 and similarly recited in claims 17-20.

2. The Examiner did not err in determining that it is proper to combine Karaoguz with Comp to meet the claim 6 limitations under 35 U.S.C. § 103(a).

3. The Examiner did not err in determining that claim 7 is unpatentable over the combination of Karaoguz and Kraft under 35 U.S.C. § 103(a).

4. The Examiner erred in determining that claim 8 is unpatentable over Karaoguz under 35 U.S.C. § 102(e).

ORDER

The decision of the Examiner to reject claims 1-7 and 9-20 is affirmed.

The decision of the Examiner to reject claim 8 is reversed.

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Application 10/668,544

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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